IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Uttam Chand & ors. vs. L.Rs. of Sampat Raj.

S.B. Civil Second Appeal No. 181/1994 against the judgment and decree dated 2.6.1994 passed by the learned Addl. District Judge, Sojat in Civil Appeal No. 31/92.

Date of Judgment: April 17, 2007.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Ms. N.M. Lodha for the appellants.
Mr. R.R. Nagori for the respondents.

BY THE COURT:

Heard learned counsel for the parties.

The plaintiff's suit for eviction of his tenants on the ground of personal bona fide necessity was decreed by the trial court by the judgment and decree dated 25.8.1992 and the appeal against the same was dismissed by the first appellate court vide judgment and decree dated 2.6.1994.

Brief facts of the case are that the two plaintiffs Shesh Mal and Sampat Ram filed the suit for eviction on 19.7.1978 against their tenants Manak Chand and Uttam Chand. The rent deed was executed by the said Manak Chand and Uttam Chand in favour of Shesh Mal and Sampat Raj. Shesh Mal is father and Sampat Raj is son, whereas the tenants Manak Chand and Uttam Chand are also father and son. The plaintiff's case was

that he along with his three sons is doing the business in one shop and the need has developed for having a separate shop for the business of grocery. The plaintiff, therefore, filed the suit for eviction of the tenant on the ground of personal bona fide necessity. The defendants submitted written statement and denied the any need of the plaintiff, however, the defendants admitted that the plaintiff is doing the business in a big shop. Defendant no.2 stated that he was not the tenant but that fact is not very much relevant for the purpose of deciding this appeal because of the reason that defendant no.1 died during pendency of the suit. The suit was decreed by the trial court on the ground of personal bona fide necessity of the plaintiff which was upheld by the first appellate court. The finding of fact has been challenged by the tenants on the ground that the finding of the two courts below on the issue of personal bona fide necessity of the plaintiff is perverse.

Following substantial questions of law were framed by this Court on 22.7.1994 while admitting the appeal:

> *"(1) Whether the impugned decree could have been passed without going into the partial eviction in terms of sub-section (2) of Section 14 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950?*
>
> *(2) Whether the finding of the learned trial court that the respondent requires the shop in dispute bona fide, is perverse ?"*

The learned counsel for the appellant vehemently submitted that

the plaintiff has five shops and the plaintiff also sold three shops and let out one shop to one Jhanwari Lal during pendency of the suit. The shops were also sold during the pendency of the suit. All these facts are virtually admitted then the plaintiff would not have sold his three shops provided he had necessity for any shop for running business or establishing his son in business. It is also submitted that the two courts below have not considered the fact of letting out one shop to Jhanwari Lal which was let out during pendency of the suit. The learned counsel for the appellant also tried to submit that the suit filed by the plaintiff was not maintainable because of the simple reason that the rent deed was executed in favour of the two persons and in the rent deed there is mention of two tenants Manak Chand and Uttam chand. Whereas in fact Uttam Chand was not the tenant in the suit premises when the suit was filed. The learned counsel for the appellant also assailed the judgment of the courts below on the ground that the two courts below have not decided the question of partial eviction in case plaintiff's need is there for the shop.

The learned counsel for the respondent supported the judgments and decree of the two courts below and submitted that in view of the stand taken by both the defendants as well as the legal representatives of the defendants, none of the legal representatives of deceased Manak Chand including Uttam Chand were doing the business in the suit

premises in the life time of the deceased tenants and, therefore, after the death of the tenant, no protection is available to any of the legal representatives of deceased Manak Chand. Not only said Manak Chand had died during pendency of this second appeal, the second tenant Uttam Chan whose name is in the rent deed and who stated that he was never doing the business in the suit premises, also died and in view of Uttam Chand's own stand, Uttam Chand's legal representatives are also not tenants as defined under Section 3(vii) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950.

The learned counsel for the respondent further vehemently submitted that in fact no substantial question of law is involved in this second appeal because of the reason that so far as personal bona fide necessity of the plaintiff is concerned, that issue is an issue of fact and the finding has been recorded by the two courts below on this issue on the basis of evidence available on record. It is not a case of misreading of the evidence or misconstruing any evidence, oral or documentary nor it is the case where the view taken by the two courts below about personal bona fide necessity of the plaintiff for the suit shop is a view which cannot be taken by any prudent man. It is also submitted that the defendants' own case if is accepted that during the pendency o the suit, the three shops were sold by the plaintiff even then that cannot be a ground for dismissal of the suit of the plaintiff for getting the decree for

eviction of his tenant. According to the learned counsel for the respondent-plaintiff, the plaintiff has not sold these shops during the pendency of the suit under assumption that by this, he will get the decree for eviction of his tenant nor he could have assumed that in case he will sale his property or part of the property during pendency of the suit then he will be deprived of his legal right to get the tenant evicted, nor any condition can be put upon the landlord with respect to other property of the landlord so as to extend to bar against alienation of the property of landlord for getting the tenant evicted from the suit premises.

I considered the submissions of the learned counsel for the parties and perused the reasons given by the two courts below.

The thrust of the argument of the learned counsel for the appellants is also that the two courts below instead of deciding the issue of personal bona fide necessity of the plaintiff, proceeded to decide whether the tenant or the legal representatives of the tenants requires the suit premises or not. Therefore, by inference of that, the two courts below misdirected themselves and rejected the defendants' need and, therefore, only decided the question of personal bona fide necessity of the plaintiff for the suit shop in favour of the plaintiff.

The contention raised by the learned counsel for the appellant on the face of it may be attractive because of the reason that the courts

below have considered the facts about working of each of the heirs of the tenant in detail and held that the tenant's none of the heir is doing any business in the suit shop. It appears that detailed reasons given for rejection of the contention of the defendants that any of the legal representatives of defendant-tenants is not doing business, gave an impression that the courts below were influenced by the fact that the tenants' legal representatives were not doing any business in the suit shop, did not decide whether there is need of the plaintiff for the suit shop or not. Before dealing with the evidence of the defendants with respect to the legal heirs of the tenant who were not doing business in the suit shop, the courts below in detail, considered the evidence of the plaintiff and his witnesses and therein the two courts below clearly held that the plaintiff is doing business along with his son and in view of the fact that he has no other accommodation to settle part of the business in another shop, therefore, the plaintiff has proved need of the suit shop. The appellants could not point out any evidence which might have been ignored by the two courts below in relation to the rebuttal to the claim of the plaintiff's need apart from the fact that the two courts below carefully considered the evidence of the plaintiff and his witnesses about personal bona fide necessity for the suit shop. By no stretch of imagination, it can be said that the finding recorded by the courts below is perverse in any manner.

The learned counsel for the appellants vehemently submitted that sale of the three shops by the plaintiff during the pendency of the suit itself was a sufficient reason for holding that there was no need of the plaintiff for any shop otherwise he would not have sold the shops. The argument advanced by the learned counsel for the appellants deserves to be rejected summarily because of very many reasons. Firstly, the landlord, the owner of the property, has absolute right to deal and manage his property including has right to sell the property. The tenant has no right to question the conduct of the landlord when the landlord sales the property unless and until the tenant takes plea of malafide or of like nature and demonstrates that the sale has been affected just to create an atmosphere of dire need in the mind of the court or the sale of the other property of the plaintiff was for the purpose of only getting the decree in favour of the plaintiff against the tenants. It cannot be presumed that landlord will sale his other property only for the purpose of getting the decree for eviction of the tenants. In view of the above reasons, the sale of the property by the landlord during the pendency of the present suit was absolutely irrelevant.

Much has been said about the letting out of the property to one Jhanwari Lal and on the basis of this, the learned counsel for the appellants submitted that the plaintiff, during the pendency of the suit, got one shop vacated and let it out to Jhanwari Lal. This evidence of

letting out a shop to Jhanwari Lal came in the statement of the defendant and thereafter in defendant's witnesses. The plaintiff was cross-examined by the defendants and a question was put to the plaintiff by the defendants that there is one Manak Chand to whom the plaintiff has let out a house or shop, which the plaintiff denied. The plaintiff at this place explained that Manak Chand is tenant in one of his *Nohara* (open piece of land, may be enclosed) which is situated in Nayon-ka-bas. The suit premises is situated in the market. The defendant, in his own statement, stated that one godown is let out to Jhanwari Lal and that is situated in the Mochiyon-ka-Mohalla. Therefore, at the most it can be gathered that the tenant Manak Chand might have vacated the one godown which has been let out to Manak Chand during the pendency of the suit. But this fact itself is of no help to the defendants because of the simple reason that the plaintiff had no opportunity to meet with this contention of the defendant which came in the evidence of the defendant after the closer of the evidence of the plaintiff and secondly the defendant himself admitted that that was not a shop but was a godown, for which the plaintiff already stated that that is Nohra and not a shop nor a house.

In view of the above reasons also, the defendants failed to prove that any shop suitable to the need of the plaintiff was got vacated by the plaintiff and let out to any other tenant. In view of the above, the

substantial question of law no.2 is decided against the appellant.

So far as question of partial eviction is concerned, the first appellate court considered the question of partial eviction in detail and relied upon the judgment of this Court wherein it has been held that when disputed property is single shop then there may not arise in the facts of some cases, reason for holding detail enquiry. In the present case, since the plaintiff is already in possession of the shop and looking to the nature of need of the plaintiff, it cannot be said that the shop in dispute, the measurement of which has come on recored in the evidence of the plaintiff, can be divided in such a manner to satisfy the need of the plaintiff. The plaintiff is , therefore, rightly held to be in need of the entire suit premises. Hence the substantial question of law no.1 is decided against the petitioner.

In view of the above the appeal deserves to be dismissed. However,the learned counsel for the appellants prayed that some time may be granted to the appellants for vacating the suit premises. I considered the prayer of learned counsel for the appellants and looking to the facts of the case, this Court is of the view that the appellants be granted time up to 30.4.2008 to vacate the suit premises.

Therefore, it is ordered that in case, the appellants furnish a written undertaking before the trial court within a period of two months from today that they shall hand over the vacant possession to the

landlord by or before 30.4.2008 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decretal amount, if due, and shall also pay the rent up to 30.4.2008(in advance) within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.5.2008.

In case of non-compliance of the order or default in payment of amount mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA),J.

mlt.